

CHRONOOLL 85-1841
26 June 1985MEMORANDUM FOR: DC/ALD/OGC
D/OS/DDA

FROM:

Legislation Division
Office of Legislative Liaison

STAT

SUBJECT: Request for Comments: Draft Justice Views
Letter on S. 1301

1. Attached for your review and comment is a copy of a draft views letter on S. 1301, the "National Security Protection Act of 1985", which was prepared by the Department of Justice.

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2. The Office of Management and Budget (OMB) has sent it to this office for comment. We would appreciate receiving your views on the matter by noon, Thursday, 27 June 1985. We apologize for the short comment time, but the item was only just provided to this Office by OMB.

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5. Thank you for your cooperation.

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Attachment
as stated

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99TH CONGRESS
1ST SESSION

S. 1301

To strengthen the counterintelligence capabilities of the Department of Defense, to amend the Uniform Code of Military Justice to establish penalties for espionage in peacetime, to provide increased penalties for espionage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18 (legislative day, JUNE 3), 1985

Mr. GRAMM (for himself, Mr. GOLDWATER, Mr. THURMOND, Mr. DOLE, and Mr. HELMS) introduced the following bill; which was read twice and referred to the Committee on Armed Forces

A BILL

To strengthen the counterintelligence capabilities of the Department of Defense, to amend the Uniform Code of Military Justice to establish penalties for espionage in peacetime, to provide increased penalties for espionage, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SHORT TITLE**

4 **SECTION 1.** This Act may be cited as the "National
5 Security Protection Act of 1985".

6 **CONGRESSIONAL FINDINGS AND POLICIES**

7 **SEC. 2.** The Congress finds—

1 (1) that there have been recent cases of disclo-
2 sures of classified information to the Soviet Union with
3 serious consequences to the national security of the
4 United States;

5 (2) that such treacherous actions reflect the most
6 reprehensible conduct on the part of citizens of the
7 United States and should be subjected to the most
8 severe penalties;

9 (3) that an excessively large number of individuals
10 who are members of the Armed Forces of the United
11 States or civilian employees of the Department of De-
12 fense presently hold clearances granting them access to
13 classified information, and that such excessive access to
14 classified information increases the likelihood of unau-
15 thorized disclosure of such information to foreign gov-
16 ernments; and

17 (4) that currently available means of technology
18 have not been used to the fullest possible extent to un-
19 cover ongoing cases of espionage.

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20 COUNTERINTELLIGENCE CAPABILITIES OF THE

21 DEPARTMENT OF DEFENSE

22 SEC. 3. The Secretary of Defense shall submit a report
23 to the Congress within 180 days after the date of the enact-
24 ment of this Act on the existing capabilities of the military
25 departments and the Office of the Secretary of Defense to
26 conduct counterintelligence operations. The Secretary shall

1 include in such report a description of any changes to existing
2 capabilities which the Secretary proposes to implement in
3 order to enhance counterintelligence operational capability in
4 the Department of Defense. The Secretary shall also state in
5 such report whether the Secretary regards the resources
6 available to him for the purpose of conducting counterintelli-
7 gence operations as adequate. In the event the Secretary de-
8 termines that additional resources are necessary, he shall
9 identify the type and amount of such additional resources re-
10 quired to meet counterintelligence requirements.

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11 SECURITY CLEARANCES

12 SEC. 4. The Secretary of Defense shall submit a report
13 to the Congress not later than 180 days after the date of the
14 enactment of this Act on plans of the Secretary for a reduc-
15 tion in the number of members of the Armed Forces of the
16 United States and civilian employees of the Department of
17 Defense who hold clearances granting them access to classi-
18 fied information. The Secretary shall include in such report a
19 schedule for the appropriate implementation of such a plan.

20 AMENDMENTS TO THE UNIFORM CODE OF MILITARY

21 JUSTICE

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22 SEC. 5. (a) Chapter 47 of title 10, United States Code,
23 is amended by inserting after section 906 the following new
24 section:

1 "§ 906a. Art. 106a. Espionage in time of peace . . .

2 "Any person subject to this chapter who at any time,
3 with intent or reason to believe that it is to be used to the
4 injury of the United States or to the advantage of a foreign
5 nation, communicates, delivers, or transmits, or attempts to
6 communicate, deliver, or transmit, to any foreign govern-
7 ment, or to any faction or party or military or naval force
8 within a foreign country, whether recognized or unrecognized
9 by the United States, or to any representative, officer, agent,
10 employee, subject, or citizen thereof, either directly or indi-
11 rectly, any document, writing, code book, signal book,
12 sketch, photograph, photographic negative, blueprint, plan,
13 map, model, note, instrument, appliance, or information relat-
14 ing to the national defense, shall be tried by a general court-
15 martial and on conviction shall be punished by death or by
16 imprisonment for any term of years or for life, except that if
17 the foreign government is the Government of the Soviet
18 Union or any other Communist country (as previously deter-
19 mined and publicly proclaimed by the President), such person
20 shall upon conviction be punished by death or mandatory life
21 imprisonment."

22 (b) The table of sections at the beginning of subchapter
23 X of such chapter is amended by inserting after the item
24 relating to section 906 the following new item:

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"906a. Art. 106a. Espionage in time of peace."

1 POLYGRAPH EXAMINATIONS FOR COUNTERINTELLIGENCE

2 SEC. 6. (a) The Secretary of Defense shall require poly-
3 graph examinations to assist in determining the initial eligi-
4 bility of persons to have access to sensitive compartmented
5 information and shall aperiodically thereafter use such exami-
6 nations to assist in determining the continued eligibility of
7 such persons to have access to sensitive compartmented
8 information.

9 (b) The Secretary of Defense may require polygraph ex-
10 aminations to assist in determining the initial eligibility of
11 persons to have access to classified information other than
12 sensitive compartmented information and may use such ex-
13 aminations aperiodically thereafter to assist in determining
14 the continued eligibility of such persons to have access to
15 such classified information.

16 (c) The results of polygraph examinations shall not be
17 used as the sole basis for denying eligibility for clearance or
18 access to any classified information.

19 (d) Individuals who refuse to submit to polygraph ex-
20 aminations conducted pursuant to the authority of this section
21 may be denied clearance or access to classified information,
22 or, if clearance or access has already been granted, may have
23 their clearance or access withdrawn.

24 (e) The polygraph examinations authorized or required
25 by this section shall be restricted to relevant issue questions

1 which are intended to elicit an indication of whether a person
2 has or plans to make unauthorized disclosure of classified in-
3 formation, or to take any other action which would violate
4 the espionage laws of the United States.

5 (f) The Secretary of Defense shall report to the Con-
6 gress not later than 180 days after the date of the enactment
7 of this Act on plans developed by the Secretary to implement
8 this section.

9 AMENDMENTS TO FEDERAL ESPIONAGE LAW

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10 SEC. 7. Section 794 of title 18, United States Code, is
11 amended by adding at the end thereof the following new sub-
12 section:

13 "(d) The death penalty for subsection (a) of this section
14 may only be adjudged if the jury, or if there is no jury, the
15 court, finds beyond a reasonable doubt, that the foreign gov-
16 ernment involved is the Soviet Union or any other Commu-
17 nist country (as previously determined and publicly pro-
18 claimed by the President) and that the document, writing,
19 code book, signal book, sketch, photograph, photographic
20 negative, blueprint, plan, map, model, note, instrument, ap-
21 pliance, or information involved is classified. ✓

22 "(e) The death penalty for subsection (b) of this section
23 may only be adjudged if the jury, or if there is no jury, the
24 court, finds beyond a reasonable doubt, that the foreign gov-
25 ernment involved is the Soviet Union, any other Communist
26 country (as previously determined and publicly proclaimed by

1 the President), or an enemy of the United States and that the
2 document, writing, code book, signal book, sketch, photo-
3 graph, photographic negative, blueprint, plan, map, model,
4 note, instrument, appliance, or information involved is
5 classified."

6 MANDATORY LIFE TERM OF IMPRISONMENT FOR SOVIET

7 ESPIONAGE

8 SEC. 8. (a) Section 794(a) of title 18, United States STAT
9 Code, is amended by striking out the period at the end and
10 inserting in lieu thereof the following: "; except that if the
11 foreign government is the Government of the Soviet Union or
12 of any other Communist country (as previously determined
13 publicly and proclaimed by the President), any person con-
14 victed under this subsection shall be punished by death or be
15 imprisoned for the rest of such person's life. Notwithstanding
16 any other provision of law, the court, in imposing a life sen-
17 tence under the exception in the preceding sentence, may not
18 sentence the defendant to probation, nor suspend such sen-
19 tence, and the defendant shall not be eligible for release on
20 parole."

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21 (b) Section 794(b) of such title is amended by striking
22 out "for any term of years or for life." and inserting in lieu
23 thereof "for the rest of his life. Notwithstanding any other
24 provision of law, the court, in imposing a life sentence under
25 this subsection, may not sentence the defendant to probation,

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1 nor suspend such sentence, and the defendant shall not be
2 eligible for release on parole."

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EFFECTIVE DATE

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SEC. 9. The amendments made by this Act shall be ap-
5 plicable to offenses committed on or after the date of the
6 enactment of this Act.

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